

1 \_\_\_\_\_ JOINT RESOLUTION NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
(Primary Sponsor)

4 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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6 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF  
7 MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN INTERIM COMMITTEE TO  
8 STUDY ISSUES ASSOCIATED WITH WATER RIGHTS FOR PRIVATE PONDS FOR FISH, WILDLIFE,  
9 WETLAND, RECREATIONAL, AESTHETIC, AND GRAVEL MINING USES; AND REQUIRING A REPORT OF  
10 THE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OF THE STUDY TO THE 58TH LEGISLATURE  
11 AND THE GOVERNOR.

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13 WHEREAS, Montana's scarce water resources are of vital importance to the state, its environment,  
14 and its citizens for existing and future prosperity; and

15           WHEREAS, as a result of Montana's arid climate, water has been appropriated from Montana's  
16   rivers and streams under the prior appropriation doctrine for more than 100 years; and

17 WHEREAS, many of Montana's river basins are now closed to new appropriations, including the  
18 Upper Missouri, Madison, Jefferson, Musselshell, Teton, Upper Clark Fork, and Milk River Basins; and

19 WHEREAS, the 56th Legislature temporarily closed the entire Clark Fork River Basin; and

20 WHEREAS, Montanans will increasingly find more basins closed by either the Legislature or the  
21 Department of Natural Resources and Conservation because of overappropriation of water; and

22 WHEREAS, continuing diversions from Montana's overappropriated rivers and streams can  
23 adversely impact historic water users; and

24 WHEREAS, continuing diversions from Montana's overappropriated rivers and streams can  
25 adversely impact existing wetlands, native fisheries, and other aquatic values; and

26 WHEREAS, the number of applications for new water rights for ponds in Montana has been  
27 increasing, even in closed river basins; and

28 WHEREAS, it is difficult to quantify the minimum or maximum amount of water needed for ponds  
29 for fish, wildlife, recreational, wetland, or aesthetic uses; and

30 WHEREAS, it is difficult to determine with certainty whether a use of water is truly

1 nonconsumptive; and

2 WHEREAS, the impacts to a stream system resulting from a diversion of water from that stream  
3 for a pond can be much greater than the impacts resulting from an instream use of water that is  
4 nonconsumptive; and

5 WHEREAS, under Article IX, section 3, of the Montana Constitution, all waters within the  
6 boundaries of the state are the property of the state for the use of its people and are subject to  
7 appropriation for beneficial uses as provided by law; and

8 WHEREAS, under Article IX, section 3, of the Montana Constitution, the Legislature shall provide  
9 for the administration, control, and regulation of water rights.

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11 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE  
12 STATE OF MONTANA:

13 That the Legislative Council be requested to designate an appropriate interim committee to:

14 (1) evaluate whether or not water use for private ponds for fish, wildlife, recreational, wetland,  
15 or aesthetic uses should be considered a beneficial use of water under Montana law;

16 (2) if private ponds for fish, wildlife, recreational, wetland, or aesthetic uses are to be considered  
17 beneficial uses, evaluate whether or not criteria or limits should be established to determine the size of a  
18 pond or the amount of water used for a pond that can be considered a beneficial use;

19 (3) evaluate what measures, if any, are needed to address:

20 (a) the proliferation of private ponds in Montana that are being constructed without first seeking  
21 or obtaining water rights; and

22 (b) the proliferation of ponds associated with gravel mining operations;

23 (4) examine the definition of "nonconsumptive use" and:

24 (a) evaluate whether or not additional criteria should be established to determine whether or not  
25 a water use is a nonconsumptive use; and

26 (b) identify what presumptions, if any, should be applied to the term nonconsumptive; and

27 (5) evaluate any other issues related to the use of water for private ponds for fish, wildlife,  
28 recreational, wetland, aesthetic, or gravel mining uses.

29 BE IT FURTHER RESOLVED, that the interim committee seek information and ideas from the  
30 following parties in the process of evaluation and before reaching conclusions and making

1 recommendations for future legislative action:

2 (1) the Department of Natural Resources and Conservation;

3 (2) the Department of Fish, Wildlife, and Parks;

4 (3) Montana water right holders and water users;

5 (4) organizations representing water right holders and water users, including but not limited to  
6 organizations representing agricultural water users, wildlife and wetland conservation interests, anglers,  
7 water-based recreational users, and water right consultants;

8 (5) organizations representing the land development industry and the real estate industry; and

9 (6) other interested persons or organizations.

10 BE IT FURTHER RESOLVED, that the interim committee may request assistance from any agency  
11 of state government, the Montana University System, organizations, and knowledgeable citizens in addition  
12 to receiving staff support from the Legislative Services Division.

13 BE IT FURTHER RESOLVED, that the committee prepare a report of its findings, conclusions, and  
14 recommendations by September 15, 2002, and submit the report to the 58th Legislature and the  
15 Governor.

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